08-551 (PGS)

IN THE UNITED STATES DISTRICT COURT
FOR THE ________ DISTRICT OF NEW JERSEY

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U.S. DISTRICT COURT
2008 JAN 31 P 3:32

Efrain Vargas	) Case No. ____________
	) VERIFIED COMPLAINT
Plaintiff,	)
	) VIOLATIONS OF FEDERAL TRUTH IN LENDING ACT, RESPA, NEW JERSEY CONSUMER PROTECTION LAWS, NEW JERSEY FAIR FORECLOSURE ACT, AND FDCPA
v.	)
HOMECOMINGS FINANCIAL GMAC MORTGAGE ALL AMERICAN MORTGAGE SERV. WMC MORTGAGE BANK OF NEW YORK ZUCKER, GOLDBERG & ACKERMAN,LLC	) WRONGFUL FORECLOSURE) JURY TRIAL DEMANDED INJUNCTIVE RELIEF FORECLOSURE SALE SCHEDULED JANUARY 31, 2008.
Defendants.	

COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW comes Plaintiff for his causes of action against Defendants and states the following:

I. INTRODUCTION

Plaintiff **Efrain Vargas**, by and through the undersigned counsel, hereby brings his action against for serious breaches of their fiduciary duties, for wrongful foreclosure, for violations of the Real Estate Settlement Procedures Act ("RESPA"), for violations of the Truth-in-Lending Act ("TILA"), for violations of the New Jersey Consumer Protection Act, Title 56, Section 8, for violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq. ("FDCPA"), and for violations of unfair and deceptive practices under the New Jersey Stat. Ann. §§ 56:8-1, et seq., violation of the New Jersey Fair

Foreclosure Act, NJSA 2A:50-53 et. Seq., to have a Sheriff's sale (foreclosure) temporarily restrained and thereafter permanently enjoined, in the event that such January 31, 2008 sale is not temporarily restrained or set aside and/or to obtain statutory damages for such wrongful foreclosure; to obtain injunctive relief, declaratory relief, and other relief for violations of the FDCPA by Defendants herein.

II. JURISDICTION/VENUE

1. This Court has jurisdiction of the FDCPA claims pursuant to 15 U.S.C. §1692k(d), 28 U.S.C. §§1331 and 1337(a), and the doctrine of pendent jurisdiction for the wrongful foreclosure and Unfair and Deceptive Practices claims pursuant to 28 U.S.C. §1367.

2. The Court has jurisdiction of the TILA and RESPA claims under 15 U.S.C. §1640(e) and 12 U.S.C. §2614, respectively.

3. Venue is proper in this district because the communications notifying Plaintiff of the foreclosure were issued from Defendants' agents in Hudson County, New Jersey, in the ____________ District, the acts and omissions complained of below with respect to the making of the loan to Plaintiff occurred in, and the Property defined below is situated in, the __________ District of New Jersey

III. PARTIES

4. Plaintiff, Efrain Vargas, (hereinafter "Plaintiff") is of majority age and resident of New Jersey, and a "consumer" as defined by 15 U.S.C. §1692a(3), residing in his home, at 6604 Lincoln Place, West New York, New Jersey 07093, which is the subject of this lawsuit.

5. Upon information and belief, Defendant, HOMECOMINGS FINANCIAL, (herein after "HOMECOMINGS" or "Defendants") is doing business in the State of New Jersey. At all times relevant hereto Defendant owned and/or serviced the Plaintiff's mortgage loan. HOMECOMINGS' principal place of business is located at P.O. Box 205, Waterloo, IA 50704-0205. The principal purpose of the Servicer Defendant's business is the collection of consumer debts using the mails and telephone, and it regularly attempts to collect consumer debts for others. The Servicer Defendant is a "debt collector" as defined by 15 U.S.C. §1692a(6). The Servicer Defendant is a "third-party debt collector." Defendants are engaged in the business of collecting consumer debts in this jurisdiction

6. Upon information and belief, Defendant, GMAC Mortgage (Hereinafter "GMAC" or "Defendants"), is an indirect wholly owned subsidiary of GMAC LLC, one of the largest financial services companies in the world, headquartered in Horsham, Pa. HOMECOMINGS FINANCIAL is a GMAC Company. GMAC Mortgage is one of the largest residential mortgage "servicers" in the nation. The company originates first and second lien residential mortgage loans through a nationwide network of retail offices, direct lending centers and internet sites under the brands *gmacmortgage.com and ditech.com*. and doing business in the State of New Jersey. At all times relevant hereinafter Defendant owned and/or serviced the Plaintiff's mortgage loan. GMAC's principal place of business is P.O. Box 4622, Waterloo, IA 50704-4622. At various times in the course of dealings giving rise to this civil action, other parties including Defendant Homecomings and WMCE have acted in one or more of the same capacities as the Servicer Defendant.

7. Upon information and belief, Defendant WMC MORTGAGE, the original lender of the subject loan, principal place of business is located at P.O. Box 54089, Los Angeles, CA 900540 – 0089. WMC Mortgage, which also does business as WMC Direct, is a wholesale originator of subprime residential mortgages. After retooling itself in the late 1990s, the company underwrites, processes, and approves loans exclusively via the Web. WMC Mortgage caters to consumers with less-than-ideal credit ratings or debt ratios. It typically securitizes and sells the loans it originates, along with their servicing rights. GE Money (formerly GE Consumer Finance), the consumer lending unit of General Electric, bought WMC Mortgage from Apollo Management in 2004. At all time relevant hereinafter Defendant owned and/or serviced the Plaintiff's mortgage loan.

8. Upon information and belief, Defendant Bank of New York, according to Zucker, the foreclosing attorneys, is the trustee successor to JP Morgan Chase and plaintiff in the pending foreclosure action re subject property, for an UNDISCLOSED principal/note holder and is a asset management and securities services company. Headquartered in New York, The Bank of New York Mellon has more than $20 trillion in assets under custody or administration and more than $1 trillion under management. Bank of New York Mellon was formed in July 2007 through a merger between The Bank of New York Company, Inc. and Mellon Financial Corporation of Pittsburgh.

9. Upon information and belief, Defendant ZUCKER, GOLDBERG & ACKERMAN, LLC is a New Jersey law firm currently processing several thousand-foreclosure actions covering properties in every county in New Jersey. Relative to the instant case, Zucker is representing Bank of New York, and handling the foreclosure

proceedings against plaintiff. Zucker represents their clients in all aspects of residential foreclosures, evictions, bankruptcies, deeds-in-lieu, and REO closings statewide are made a party to the instant case for their violations of the FDCPA. Defendants are engaged in the business of collecting consumer debts in this jurisdiction and are "debt collectors" as defined by FDCPA.

10. Plaintiff also brings this action against any person relevant to the acts and claims alleged herein, but who may be identified during discovery in this case.

IV. DEMAND FOR JURY TRIAL

11. Defendant DEMANDS A JURY TRIAL pursuant to Rule 38 (b) and hereby states the following:

V. DEFINITIONS

As used in this Complaint:

a. The terms "amount financed," "annual percentage rate," "closed-end credit," consumer," "consumer credit," "consummation," "credit," "creditor," "dwelling," finance charge," "mortgage," "open-end credit," "payment schedule," "points and fees," "residential mortgage transaction," "reverse mortgage transaction," "security interest," and "total of payments" are defined as set forth in sections 103 and 128 of TILA, 15 U.S.C. §1602 and §1638, and Sections 226.2, 26.4, 226.18, 226.22, 226.32, and 226.33 of Regulation Z, 12 C.F.R. §§ 226.2, 26.4, 226.18, 226.22, 226.32, and 226.33.

b. The term "Regulation Z" means the regulation the FRB promulgated to implement and HOEPA, 12 C.F.R. 226, as amended. The term also includes the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. 226, supp.1, as amended.

c. The term "TILA" means the Truth in Lending Act, 15 U.S.C. §§ 1601-1666j, as amended. TILA, which took effect on July 1, 1969, is intended to promote the informed use of consumer credit by requiring creditors to disclose credit terms and costs, requiring additional disclosures for loans secured by consumers' homes, and permitting consumers to rescind certain transactions that involve their principal dwellings.

VI. DEFENDANT'S BUSINESS

12. In the course of offering and extending credit to consumers, defendants have failed to provide material information required to be disclosed by TILA.

13. At all times relevant to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

VII. STANDARD OF REVIEW RE TRUTH IN LENDING ACT STATUTORY CLAIMS AND DAMAGES

14. TILA is a remedial statute that must be construed liberally to effectuate its purposes. The overriding purpose of TILA is to promote the informed

use of consumer credit. TILA damage provisions are an incentive to creditors to make the required disclosures and therefore should be liberally construed. Damages need not be proven with mathematical accuracy, "Where the fact of injury is adequately shown, the court should not cavil at the absence of specific or detailed proof of damages.

15. Uncertainty as to the amount of damages, in and of itself, does not preclude recovery. No circuit court has ever agreed with the arguments that detrimental reliance standard is appropriate for TILA. Any creditor who violated certain TILA requirements is liable to the consumer, in an individual action, for statutory damages pursuant 15 U.S.C. 1605 et seq.

16. Statutory damages are available in addition to actual damages, costs and attorneys fees pursuant 15 U.S.C. § 1604(a)(2)(A) and (3). To obtain statutory damages the consumer need not show that the creditor intended or knew about the violation or that the consumer was deceived.

17. The consumer need not have been aware of the information in the disclosure statement. It is well-established in case law that the consumer need not show any actual damages. Consumers are intended to act as "private attorney generals" to facilitate enforcement. Thus, once liability is established, the imposition of damages for violations is mandatory. However, nothing in TILA foreclosures prevents a consumer from recovering damages under both TILA federal statutes and state law for similar violations. Because the federal act is silent, the issue is usually a state law question. Yet, if the state law violation is a violation of substantive consumer protections, such as a state usury or state unfair and deceptive practices law, courts generally permit recovery under both state law and federal claims.

18. As per TILA, creditors are required to provide clear, accurate and timely disclosure of important credit information. Any interpretation which unnecessarily burdens the consumer's case will serve only to benefit the wrongdoer and undermine the remedial purpose of the law. A claim for

any available relief may be maintained in any court of competent jurisdiction.

19. The rule that the Truth in Lending Act be liberally construed applies to its remedy provisions just as much as to its substantive requirements. The creditor bears the burden of proving compliance with TILA. See Wright v. Tower Loan of Mississippi, 579 F.2d 436, 444 (5th Cir. 1982), Williams v. Gelt Financial Corp (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999), aff'd, 237 B.R. 590 (E.D. Pa. 1999), In re Pinder, 83 B.R. 9905, 913 (Bankr. E.D. Pa. 1988).

20. If creditor is unable to produce a copy of the TIL disclosure and the borrower testifies that they did not receive the disclosures (even if not "totally convincing"), the burden shifts to the creditor to produce some positive evidence to indicate that the disclosures were given. Williams v. Gelt Financial Corp (In re Williams), 232 B.R. 629 (Bankr. E.D. Pa. 1999), aff'd, 237 B.R. 590 (E.D. Pa. 1999), In re Pinder, 83 B.R. 9905, 913 (Bankr. E.D. Pa. 1988), In re Herbert, 86 B.R. 433 (Bankr. E.D. Pa 1988), where debtor testified to non-receipt, burden shifted to more knowledgeable creditor to produce disclosure statement; if none produced, court cannot assume one exists.

VIII. BACKGROUND

21. The federally related mortgage transaction at the root of this case was closed with documents signed on or about July 28, 2008 ("Closing"), whereupon Plaintiff executed a promissory note (Homecomings loan/account number #0690035274)("Note") to WMC Mortgage (original loan number #11283323) and a real property security agreement which transaction is a consumer credit transaction within the meaning of TILA, 15 U.S.C. § 1602 and Regulation Z § 226.2., which was then and now remains the permanent residence and homestead of the Plaintiff, known locally as 6604 Lincoln

Place, West New York, New Jersey 07093, and being more particularly described as Lot (s) 27 & 28 in Block 3, as shown on a certain map entitled "Map of Property belonging to Herman Walker and other in Union Township, Hudson Co., NJ," which map was filed on October 22, 1889 in the Office of the Register of Hudson County as Filed Map No. 961. Note: being Lots 3, Block 3, Tax Map of the Town of West New York, County of Hudson.

22. In violation of the Truth In Lending Act, not at any time during the history of the subject loan were disclosures documents provided to Plaintiff in any form or manner required by applicable statute or regulation, and therefore Defendants fail to disclose the true nature and cost of the credit transaction which Defendants now seek to result in foreclosure.

23. Either before, during and/or after the settlement, Defendants failed and/or refused to provide Plaintiff with copies of important documents. As a result, Plaintiff retained a professional mortgage compliance auditing group to review Plaintiff's to obtain and examine Plaintiff's loan documents. The compliance audit revealed, inter alia, that Defendants failed to provide the following numerous lawfully required loan disclosures: the Truth in Lending Disclosure Statement (TIL) (material disclosure figures), the Good Faith Estimate (GFE), Right to Cancel, the Appraisal and other important disclosures, which would explain Plaintiff's consumer rights, as well as other rights, including but not limited to, the right to cancel the contract.

24. This action involves a consumer agreement as defined by 15 U.S.C. § 1692a (5).

25. Plaintiff paid All MERICAN MORTGAGE SERVICE $1350 in up front fees for which a detailed accounting has not been provided. $450 of the aforementioned fee, Plaintiff understood was for an appraisal which the Plaintiff never saw or received, nor is indicated on the HUD 1 as paid out of closing. The HUD 1 shows no Paid Out of Closing fees whatsoever.

26. Defendants also intentionally failed and/or refused to provide Plaintiff various disclosures that would indicate to them that the contract entered into is void and illegal.

27. Defendants' attorney and/or settlement officer did not furnish Plaintiff with copies of numerous important settlement documents at any time in the loan's history.

28. On or about December 7, 2007, Advocates for Justice, working on behalf of Plaintiff, contacted Zucker, Goldman and Ackerman, attorneys for Bank of New York, also the plaintiff in the impending foreclosure action in connection with the subject property, to obtain loan documents. Ms. Rougeux, President of Advocates for Justice, spoke with Shawn (who would not provide his last name) at the law offices of Zucker. Shawn stated that although they could forward the documents in their possession relative to the subject property, but they did not have the loan closing documents.

29. On or about December 23, 2007, Plaintiff's attorney, Lawrence Lofaro requested copies of closing loan documents from Defendant Homecomings Financial. Homecomings stated that they did not have access to the documents and would not be able to provide them until sometime in January. To date, Defendant Homecomings has not provided the documents.

30. On or about December 24, 2007, Consumer Advocate Group, Advocates for Justice, initiated a call to Homecomings on behalf of Plaintiff, to obtain documents. After being transferred numerous times, Homecomings never connected Advocates with anyone at Homecomings who could or would provide Plaintiff's closing loan documents.

31. On or about December 24, 2007, Advocates for Justice initiated another call to WMC Mortgage, the original lender according to the Note. WMC stated that they had no record of the loan, thus had no documents.

32. On or about January 18, 2008, attorney Lofaro was able to contact attorney Ileana Montes who was apparently the closing attorney relative to the subject loan. Montes forwarded to Lofaro a copy of the HUD 1, the Note, the Mortgage, and title work not connected to the subject loan, but not any disclosure documents.

33. On or about, January 19, 2008, Advocates for Justice, initiated another call and contacted All-Pro Title Group, LLC., however, the title group stated that they had no records relative to the subject loan and that the title company, St. George Title Company, who might have handled the transaction is no longer in business. All-Pro suggested we contact the underwriters to inquire about the missing loan documents.

34. Furthermore, Zucker, Goldman and Ackerman, LLC. are debt collectors as defined by the FDCPA and by the New Jersey Supreme Court, see Hodges v. Feinstein, Raiss, Kelin & Booker LLC, No. A-113 (1/31/07), the New Jersey Supreme Court held, by a vote of 4 to 2, that lawyers who regularly file summary dispossess (eviction)

proceedings are "debt collectors" subject to the Fair Debt Collection Practices Act. Zucker committed numerous violations of the act.

35. On or about July 17, 2007, Zucker sent a letter to Plaintiff informing him that the Sheriff's foreclosure sale scheduled for 08/23/07 had been adjourned.

36. On or about September 25, 2007, Zucker sent a letter to Plaintiff providing him with three days notice, from the date of the letter to September 28, 2007, to cure the default.

37. After Plaintiff made payments to Defendants for approximately two years, Plaintiff, subsequently defaulted on the loan on or about August 2007.. Shortly thereafter, with the assistance of a foreclosure specialist group, Plaintiff entered into a repayment plan with Homecomings on or about November 09, 2007 (EXHIBIT __ , Repayment Plan and Exhibit __, Plaintiff affidavit).

38. As of December 13, 2007, Plaintiff had made two undisputed payments out of the three scheduled payments. The first payment was in the amount of $45,000 and the second payment was in the amount of $3,050. As indicated on the attachment to the payment plan, the sum of the payments adds up to $62,683, although the text of the repayment plan ambiguously stated that the amount to cure default was $58,975.48 "plus such additional amounts that are presently due..." (exhibit ____).

39. On or about January 11, 2008, a Dispute Letter was send via certified mail to Defendants by Plaintiff (EXHIBITS __).

40. As a result of failing to provide the requisite loan documents, Defendants also violated the Equal Credit Opportunity Act, *Codified to 15 U.S.C. 1691a,* by failing to provide an appraisal or notice of the right to an appraisal as required by § 701(d)(6)(e).

41. Furthermore, Defendants in violation of the Truth in Lending Act, inter alia, have failed to provide certain "material disclosures." Documents were not at any time provided to Plaintiff, including Good Faith Estimate, Truth-in-Lending Disclosure Statement and Settlement Statement (HUD-1). All failed in one or more material respects to disclose to Plaintiff, in a form and manner required by applicable statute or regulation, the true nature and cost of the credit transaction which Defendants now seek to result in foreclosure.

42. Defendants, in violation of the New Jersey Fair Foreclosure Act ("NJFA"), fail to provide an accurate notice of intent to foreclose, which must include, among other things, a description of the debt; the nature of the default; the amount necessary to cure the default; the date before which default must be cured (which must not be less than 30 days of the notice); and that if default is not cured the lender may exercise remedies. Due to the fact that Plaintiff has made two monthly payments amounting to approximately $48,000, each time Zucker sends a notice of the foreclosure sale (every month during the repayment plan even though payment in plan was made) the amount of default is inaccurate and different from the amount to cure as stated in the original and continuing foreclosure, upon which defendants' rely on to justify sending notice of the Sheriff's sale during the repayment plan period, circumventing the thirty-day notice provision of the NJFA.

43. New Jersey Fair Foreclosure act provides that the homeowner is given thirty days notice of foreclosure. Defendants send notice of sheriff's sale to plaintiff each month providing approximately three weeks notice from the date of their notice.

44. At this time, Defendants continue to foreclosure while Plaintiff is in the repayment plan. Plaintiff having already paid $48,050.00 from November 13, 2007 to date, Defendants continue to mail Notice of the Sheriff's foreclosure sale (each letter providing only approximately three weeks notice) every month, even though Plaintiff made the scheduled payment. Although Plaintiff has substantially performed, he has not made the payment of $14, 633 that was due January 13, 2008.

IX. COUNT ONE WRONGFUL FORECLOSURE

45. Still urging and relying on the foregoing and on all matters set forth herein below, Plaintiff would show that if Defendants are allowed to proceed to conduct the substitute trustee's sale on January 31, 2008, such foreclosure would be wrongful, and would permit Defendants to perpetuate a course of wrongful conduct that began in the process of making the loan to Plaintiff which is at the heart of this dispute. Such sale would be wrongful by virtue of non-compliance with applicable New Jersey Property Code provisions; by virtue of Defendants' violations of TILA, RESPA, DTPA, FDCPA; and at common law.

46. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

X COUNT TWO VIOLATION OF TRUTH IN LENDING ACT, 15 USC § 1601 ET SEQ.

47. Plaintiff incorporates all of the foregoing allegations.

48. Plaintiff is claiming all causes of action, including the TILA cause of action by recoupment pursuant to 15 USC §1640(e) and the common law of the State of New Jersey.

49. The original payee of the note and beneficiary of other documents at Closing ("Lender") acted in contravention of the Federal Truth-in-Lending Act, 15 USC §1601 *et seq*. and Title 12 Code of Federal Regulations, Part 226 (Regulation Z) in the following particulars, each and all of which may be asserted now defensively by Plaintiff as a result of the foreclosure sale:

a. Defendants failed to provide a description of the total of payments, thereby violating Reg. Z, Section 226.18(h).

b. Defendants failed to provide the total amount of finance charge thereby violating *Reg. Z § 226. 18(d)*and*15 U.S.C. § 1638(a)(3)* and *Regulation Z §§ 226.4.*

c. Defendants failed to disclose properly and accurately the annual percentage rate thereby violating 15 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(e).

d. Defendants failed to provide a payment schedule reflecting all components of the finance charge to repay loan principal, interest on the loan, and any other finance charge payable by the consumer after consummation of the transaction, thereby violating Reg. Z, Section 226.18(g).

e. Defendants failed to disclose properly and accurately the "amount financed" the amount finance in violation of 15 U.S.C. § 1638(a)(2) and proper description of charge in violation of Reg. Z § 226.18(b).

f. Lender failed to provide timely early disclosures for residential mortgage transaction subject to RESPA in violation of 226.19(a)(1).

g. Since Defendants failed to provide any consumer credit transaction mortgage loan initial or closing disclosures, Defendants failed to disclose any security interest taken, thereby violating 15 USC 1638(a)(9): Reg. Z, 12 C.F.R. § 226.18(m), typically found on the TIL Statement Disclosure which is completely missing.

h. Accordingly, Defendants failed to provide disclosures for a variable rate loan which must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation thereby violating Reg. Z, Section 226.18(f).

i. Lender failed to provide that preliminary disclosures were given to borrowers, as required by *12 CFR §226.17(b) and 226.19(a).*

j. Lender failed to provide an Itemization of Amount Financed or disclosure telling borrowers that they are entitled to that disclosure, in writing, as required by *12 CFR §226.18(c).*

k. 12 C.F.R. § 226.17(a)(1) requires that disclosures are clear, conspicuous, grouped, segregated, and in writing in a form the consumer can keep. Here, important disclosures (the Truth in Lending Disclosure Statement, the Good Faith Estimate, the

Itemization of Amount Financed, Right to Appraisal Notice) missing altogether. Disclosures therefore cannot meet the requirements of this subsection.

l. Lender failed to provide that a Good Faith Estimate was given before or at consummation, thereby violating 12 U.S.C. § 2604 (d).

m. Lender failed to provide the appraisal or notice of the right to the appraisal at any time over the history of the loan violating the Equal Credit Opportunity Act (codified *15 U.S.C. 1691a)* § 701(d)(6)(e).

n. Lender failed to provide that the note contains a variable rate feature pursuant Reg. Z., § 226.18(f)(i).

o. Lender failed to provide disclosures either at the time of application or before Plaintiff paid a nonrefundable $620 application fee (see line 905 of the HUD 1) within three business days following receipt of the application in violation of Reg. Z, § 226.19(b).

p. Lender failed to provide a booklet entitled "Consumer Handbook on ARMS," or a suitable substitute in violation of 226.19(b)(1).

q. Lender failed to provide that the consumer should ask for the current margin and interest rate in violation of 226.19(b)(2)(iv).

r. Lender failed to provide a historical example of the maximum interest rate and payment in violation of 226.19(b)(2)(viii).

s. Lender failed to provide an explanation of how the loan payment can be calculated based on the example in violation of 226.19(b)(2)(ix).

t. Lender failed to provide a statement that disclosures for other variable rate loan programs are available in violation of 226.19(b)(2)(xii).

u. Lender failed to provide that disclosures were provided before consummation in violation of 226.17(b).

v. Lender failed to provide a disclosure that the transaction contains a variable-rate feature and a statement that the variable rate disclosures have been provided earlier in violation of 226.18 (f)(2).

w. Lender failed to provide subsequent disclosures in accordance with timing requirements which provide the contractual effects of adjustments, including the new payment amount and a statement of the loan balance in violation of 226.20 (c)(4).

x. Lender failed to provide a security interest disclosure in violation of 226.18(m).

y. Lender failed to provide that there is a statement referring to the contract document for specified information in violation of 226.18(p).

z. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XI. COUNT THREE VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT ("RESPA")

50. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs.

51. As well, Defendants violated the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 et seq):_by failing to provide a timely and accurate Settlement Statement/HUD 1 pursuant 12 U.S.C. § 2603(a) and (b); Reg. X, 24 C.F.R § 35008(a) and (b).

52. Defendants violated RESPA by not providing a Good Faith Estimate, 12 U.S.C. § 2604 (d). The lack of a Good Faith Estimate subjects Plaintiff to a bait and switch scheme and no information upon which to shop for credit as is the design and purpose of the mandatory Truth in Lending disclosures.

53. In addition, Defendants violated RESPA, 12 U.S.C. § 2605(a), Reg. X, 24 C.F.R.§ 3500.21, yet again by failing to provide a RESPA Servicer Statement Disclosure.

54. Defendants violated 12 U.S.C. § 2603, Reg. X, 24 C.F.R.§ 3500.8 by breaching their duty to provide a HUD 1, clearly and conspicuously itemizing all charges actually imposed on the borrower.

55. Defendants violated 12 U.S.C.§ 2605(b), Reg. X, 24. C.F.R. 3500.21(b) by not providing Transfer of Service Statement.

56. Defendants may have violated 12 U.S.C.§ 2607, Reg. X, 24. C.F.R. 3500.15, by failing to provide a "Controlled Business Arrangement Notice."

57. Defendants may have violated 12 U.S.C.§ 2609, Reg. X, 24. C.F.R. 3500.17 (g), by failing to provide an Initial Escrow Account Statement.

58. Defendants may have violated 12 U.S.C.§ 2609 (c), Reg. X, 24. C.F.R. 3500.17 (i), by failing to provide an Annual Escrow Statement.

59. Defendants may have violated 12 U.S.C.§ 2609 (c), Reg. X, 24. C.F.R. 3500.17, by failing to perform an Escrow Analysis.

60. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XII. COUNT FOUR VIOLATION OF FAIR FORECLOSURE ACT (NJSA 2A:50-53 et. Seq.)

61. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs.

62. Defendants charged fees that are not indicated on the mortgage note, thus are in breach of the mortgage contract.

63. Defendants failed to provide the requisite thirty-day notice of Sheriff's Foreclosure Sale.

64. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XIII. COUNT FIVE VIOLATIONS OF FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

65. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs.

66. The Servicer Defendant attempted to collect a consumer debt ("Debt") allegedly owed by Plaintiff. The obligation required Plaintiff to pay money arising out of transactions in which money, property, insurance, or services were the subject thereof and the same were primarily for personal, family, or household purposes.

67. The foregoing acts and omissions, including but not limited to wrongful threat to conduct a substitute trustee's sale of the Property without compliance with applicable New Jersey Property Code requirements, were undertaken on behalf of the Servicer Defendant by their respective officers, agents, or employees acting at all times relevant hereto within the scope of that relationship. The foregoing acts and omissions of the Servicer Defendant were undertaken willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff. The foregoing acts and omissions of the Servicer Defendant were undertaken indiscriminately and persistently, as part of the Servicer Defendant's regular and routine collection efforts, and without regard to or consideration of the identity or rights of the Plaintiff.

68. The Defendant HCs violations of the FDCPA include, but are not limited to the following.

69. In violation of 15 U.S.C. 1692e(5) and the "least sophisticated consumer standard," Servicer Defendant HC threatened to take an action, including the threatened substitute trustee's sale for August 23, 2007, December 20, 2007, January 31, 2005, which cannot legally be taken or that is not intended to be taken.

70. In violation of 15 U.S.C. 1692f, Servicer Defendant HC used unfair or unconscionable means to collect or attempt to collect a consumer debt.

71. Not any written or oral communication sent to Plaintiff from Zucker, identified Zucker as debt collectors and/or stated that the communication/letter was "an attempt to collect a debt and information obtained will be used for this purpose," according to 15 U.S.C.1692e(11).

72. Not all of Zucker's communications indicate that they are from a debt collector pursuant 15 U.S.C. 1692e(11).

73. The debt collector Defendant Zucker failed to send Plaintiff/consumer a validation notice within five days of the initial communications, either written or oral as per 15 U.S.C. 1692g.

74. Under 15 U.S.C. § 1692k, Defendant HC's and Defendant Zucker's violations of the FDCPA render HC liable to the Plaintiff for statutory damages, costs, and reasonable attorney's fees.

75. Defendants communications give the false impression of the character, amount, or legal status of the alleged debt pursuant 15 U.S.C. § 1692e(2).

76. Moreover, Plaintiff was never provided a Notice of the Right to Dispute the Debt at any time before, after or during the initiation of foreclosure collection activities, including the scheduling of a Sheriff's sale. (EXHIBITS __ thru __ , Copies of Zucker collection letter).

77. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XIV. COUNT SIX (Injunctive Relief)

78. Plaintiff repeats and realleges each and every item and allegation above as if fully and completely set forth herein.

79. Injunctive Relief. In part because Plaintiff will otherwise be irreparably harmed without an adequate remedy at law, Plaintiff seeks injunctive relief to bar any foreclosure proceeding in any form by Defendant HC or otherwise, and specifically to temporarily restrain the noticed January 31, 2008 Sheriff's sale of the Property. Plaintiff has approximately $80,000 in equity and will be irreparably injured without adequate remedy at law if the Property is now foreclosed and the Plaintiff is thereafter, as a result, evicted.

80. Substantial recovery by Plaintiff is probable, in view of the number and size of the claims he makes, the possibility of doubling or tripling of some damages, and her recovery of fees and costs. The risk to Defendants associated with issuance of a temporary restraining order is truly minimal.

81. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XIV. COUNT SIX BREACH OF CONTRACT, GOOD FAITH DEALINGS AND INFLICTION OF INJURY.

82. Plaintiff repeats and realleges each and every item and allegation above as if fully and completely set forth herein.

83. Plaintiff has been under severe stress due to the risk of foreclosure of his home and the failure of the Defendants of giving a proper type of loan, failure to give proper disclosure and causing the Plaintiff damages there from. The Defendants have refused to provide Plaintiff loan closing documents after repeated attempts by Plaintiff, his attorney and advocate.

. 84. As a result of all of the Defendants' negligence in failing to do good faith dealings, failing to give proper disclosure as outlined above, and causing the loan to be foreclosed, Defendants have breach the contract. Plaintiff have suffered injury including damages for pain and suffering and emotional distress. The injuries are continuing in nature.

85. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

86. The amount of Plaintiff's damages are currently unknown and will be established at time of trial.

XV. COUNT SEVEN UNCONSCIONABILITY

87. Plaintiff incorporates the factual allegations above as if fully herein set forth

88. Defendant intentionally, although possibly within compliance with certain laws. Defendants conduct rises to the level of unconscionability when Defendant, in

essence, refused to provide Plaintiff with closing loan documents preventing Plaintiff from providing a proper defense of his mortgage.

89. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XVI. COUNT EIGHT UNFAIRNESS ALLEGATION

90. Plaintiff incorporates the factual allegations above as if fully herein set forth

91. The Lender's practice of nondisclosure is offensive to society's sense of justice; the practice offends public policy, taking advantage of the elderly, the practice is immoral, unethical, oppressive and unscrupulous, and the nondisclosure of material facts.

92. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XVII. COUNT NINE UNFAIR TRADE PRACTICES INVOLVING NON-COMPLIANCE, 15 USC SECTIONS 1601, ET SEQ.

. 93.. Plaintiff incorporates the factual allegations above as if fully herein set forth

94. FTC has specifically held that violations of the Federal Truth in Lending Reserve Board Regulation Z and the TILA act are unfair and deceptive practices under the FTC act. Courts in many states have held that a creditor who violates TILA also

violates the state UDAP statute. See Cheshire Mortgage v. Montes, 612 A.2d 1130 (Conn. 1992), W.S. Badcock Corp. v. Myers, 696 So. 2d 776 (Fla. Dist Ct. app. 1997), Commonwealth ex rel. Zimmerman v. Nickel, 26 Pa. D. & C.3d 115 (C.P. Mercer, City, 1983)(failure to provide Truth in Lending rescission notice is violation of state UDAP statute). TILA violation has been held by some state courts to not automatically be a UDAP violation.

95. Defendants made a false representation of the settlement agreement when they failed to provide that the mortgage documents were given by Defendant, after the settlement had taken place, and after Plaintiff had purported to sign the documents.

96. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XVIII. COUNT TEN BREACH OF FIDUCIARY DUTY

97. Plaintiff incorporates the factual allegations above as if fully herein set forth.

98. Arguably, the lender has the role of advisor and knows or should have known the borrower trusted him. In the alternative, the lender created a quasi-fiduciary relationship of trust and confidence, which at least gives rise to a duty of disclosure. See Restatement (Second) of Torts § 551 confidential relationship existed between bank and customer, bank employee had duty to do nothing which would place customer at a disadvantage.

99. A fiduciary duty arose when Plaintiff, the weaker, less informed party, in the sense of the liability to protect oneself, placed his trust and confidence in the Lender. 62 N.C.L. Rev. 295 (1984), J. Shepard, The Law of Fiduciaries, 31 n. 70 (1981).

100. Defendant/Lender breached their fiduciary duty when Defendant failed to exercise reasonable care in the storage and maintenance of the Plaintiff's promissory note and closing documents.

101. As a direct, proximate and foreseeable result of Defendants' actions, Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XVIV. COUNT ELEVEN COMMON LAW FRAUDULENT CONDUCT AND MISREPRESENTATION

102. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs.

103. Defendants failed to disclose each term of the contract.

104. Defendants induced Plaintiff into a loan without any reasonable inquiry into that consumer's ability to pay.

A. BRIEF IN SUPPORT OF FRAUDULENT CONDUCT and MISREPRESENTATION

a. Mere nondisclosure of information may be the basis for a fraud action if the defendant is under an affirmative duty to disclose. Here the Truth in Lending Statutes provides that lenders are required to disclose. See Tempo Tamers, Inc. v. Crow-Houston Four, Ltd., 715 S.W.2d 658,669 (Tex App.—Dallas 1986, ref. n.r.e.).

b. Defendant/Servicer never responded to the numerous inquiries of the Plaintiff, in connection with the disposition of the promissory note. When the particular circumstance imposes a duty to speak and the party remains silent the silence is equivalent to a false representation. See Spoljaric v. Percival Tours, Inc. 708 S.W.2d 432, 435 (Tex. 1986); Restatement, Second, Contracts § 161.

c. Silence may be as misleading as a positive misrepresentation when there is a duty to speak. See Rowntree v. Rice, 426 W.W.2d 890, 892 (Civ. App. – San Antonio 1968, ref. n.r.e.). A fraud action based on nondisclosure is essentially similar to a constructive fraud based on breach of a duty to disclose. Contracting parties ordinarily bargain at arm's length, so that in the absence of the duty to speak, mere silence is not a basis for either actual or constructive fraud. However, most commonly, a duty to disclose information arises from a confidential or fiduciary relationship between the parties. Generally a duty is imposed in cases in which the party's silence is unfairly deceptive or misleading.

d. For example, when a party makes a statement believing it to be true, but later discovers that the statement is false or has become false because of changed circumstances, the party must inform another party who is know to be acting on the basis of the original statement. See Susanoil, Inc. v. Continental Oil Company, 519 S.W.2d 230, 236 n.6 (Civ. App. – San Antonio 1975, ref. n.r.e.). Here, when the status of the promissory note or the change in the note holder occurred, not such notice was afforded Plaintiff who relied detrimentally.

e. Nondisclosure may support a fraud claim when one party is uniquely knowledgeable about the subject matter of the transaction, so that the other party does not have an equal opportunity to discover the facts. See Moore & Moore Drilling Company v. White, 345 S.W.3d 550, 555 (Civ. App _- Dallas 1961, ref. n.r.e.). Point in fact, the existence of the Truth in Lending Act was designed to protect the consumer, based on the same theory that consumer is inherently disadvantaged in a credit transaction and even in exercising due diligence is not likely to find evidence to demonstrate that Defendants damaged Plaintiff.

f. The Texas Supreme Court has stated that there is less strictness in recognizing a right of rescission as opposed to a damage claim.

g. In the instance that the Court finds that Plaintiff has paid the wrong party, or that Defendant cannot prove their holder status, Plaintiff will have detrimentally relied on false representation as to holder of the note is.

h. In cases of Misrepresentation and Nondisclosure, rescission would be possible based on negligence or without fault, even though knowing or reckless falsity and intent to induce reliance. The Court, in Smith v. National Resort Communities, Inc., 585 S.W.2d 655, 658 (Tex. 1979), noted that rescission may be appropriate based on nondisclosure, even in the absence of a duty of disclosure, if the undisclosed fact is basic and one that the speaker knows the other party would regard as material.

105. As a direct, proximate and foreseeable result of Defendants' actions Plaintiff is subject to loss of property and loss of use and other damages caused by Defendants' actions.

XX. INJUNCTIVE RELIEF

106 By the actions above and set forth herein the Plaintiff have a strong likely hood of prevailing on the merits. The Plaintiff requests that this Court should grant a temporary restraining order and injunctive relief under (Federal) FRCP 65(b) and 65(a).

XXI. PLAINTIFF RESERVES THE RIGHT TO AMEND THIS ORIGINAL COMPLAINT

REQUEST FOR RELIEF

WHEREFORE, Plaintiff pray that this Court:

1. Declare that the Servicer Defendant's actions violate the FDCPA;
2. Declare that the Servicer Defendant's actions;
3. Enjoin the Servicer Defendant's actions which violate the FDCPA;
4. Declare Defendant Zucker actions violate FDCPA;
5. Declare Defendants' actions violate TILA and RESPA;
6. Declare Defendants' actions violate the New Jersey Fair Foreclosure Act;
7. Declare Defendants' action constitute misrepresentation and fraud;
8. Declare Defendants' actions Unconscionable.
9. Declare Defendants' actions Unfair.
10. Declare Defendants' actions to be a Breach of Duty;
11. Declare Defendant's actions to be Unfair and Deceptive;
12. Enter judgment in favor of Plaintiff for statutory damages, costs, and attorneys' fees as provided by 15 U.S.C. §1692k(a);
13. Award Plaintiff compensatory damages in an amount to be determined at trial;
14. Award Plaintiff exemplary damages as allowed by law;
15. Award Plaintiff her reasonable and necessary attorney's fees and costs;
16. Award Plaintiff pre-judgment and post-judgment interest as allowed by law;
17. Temporarily restrain, and permanently enjoin, any action to conduct a substitute trustee's or sheriff's (foreclosure) sale of the Plaintiff's residence Property, specifically to include the proposed sale on January 31, 2008, pending resolution of the instant case, and specifically to bar enforcement of any and all foreclosure-related remedies outside this suit;

107. Grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

Efrain Vargas

VERIFICATION

State of New Jersey

County of Hudson

Before me, the undersigned authority, on this day personally appeared Efrain Vargas, Plaintiff herein, and stated that she has read the factual statements contained in the foregoing Complaint, and that the statements of fact contained therein are within his personal knowledge and are true and correct.

Efrain Vargas

Efrain Vargas

Subscribed and sworn to before me, a Notary Public, on this 4th day of October, 2005, to which witness my hand and seal of office.

____

Notary Public, State of New Jersey